

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-217152

DATE: February 25, 1985

MATTER OF: Reliable Service Technology

DIGEST:

1. Risk of nonreceipt of solicitation amendment rests with bidder where failure to receive amendment is not due to a deliberate effort by contracting agency to exclude bidder from competing.
2. Bid which fails to acknowledge amendment requiring upward wage rate revisions and containing several material revisions and an addition to bidding schedule was properly rejected as nonresponsive.

Reliable Service Technology (Reliable) protests the rejection of its bid as nonresponsive under solicitation No. 4-SI-52-00700/DC-7607, issued by the Department of the Interior (DOI) for corrosion protection of certain pumping plants in conjunction with its Navajo Indian Irrigation Project. Reliable alleges that it was improper for DOI to reject the firm's bid for failure to acknowledge an amendment to the solicitation. Reliable also alleges that it has been deliberately prevented by DOI from being awarded the contract.

We deny the protest.

The solicitation was originally issued on May 25, 1984. After five amendments to the solicitation, bids were opened on August 9, 1984. However, due to an ambiguity in the specifications, all bids were rejected, including Reliable's low bid, and, by virtue of a sixth amendment, a new bid opening date was scheduled for October 11, 1984. The seventh and final amendment, dated September 24, 1984, contained a line item addition, several upward revisions to the bidding schedule, and also incorporated increased wage rate determinations. Upon bid opening, it was discovered that Reliable, again

the apparent low bidder, had failed to acknowledge the seventh amendment, and the firm's bid was subsequently rejected as nonresponsive.

We first consider Reliable's contention concerning its failure to receive amendment No. 7 and that DOI personnel failed to mention the existence of amendment No. 7 despite the firm's telephone inquiry of October 9, 1984, allegedly trying to ascertain if any other solicitation changes had occurred.

It is well established that the risk of nonreceipt of a solicitation amendment rests with the bidder for a government contract. Marino Construction Company, Inc., 61 Comp. Gen. 269 (1982), 82-1 C.P.D. ¶ 167. This rule stems from the fundamental principle that, from the government's point of view, the propriety of a particular procurement is determined on the basis of whether adequate competition and reasonable prices are obtained, not on whether every possible prospective bidder is afforded an opportunity to bid. Mar-Mac Precision Corp., B-214604, Aug. 13, 1984, 84-2 C.P.D. ¶ 164. Thus, we will generally decline to sustain a protest based on nonreceipt of a solicitation amendment unless the agency has made a conscious and deliberate effort to exclude a bidder from competing for the contract. Marino Construction Company, Inc., *supra*.

DOI maintains that Reliable was mailed a copy of amendment No. 7 in the same manner as it furnished other documents to Reliable which the firm did receive. Although Reliable complains it was given misleading information in response to its telephone inquiry, it acknowledges that the government employee answering its inquiry was not the contracting officer responsible for the procurement, but rather a secretary. The protester's reliance on a secretary's knowledge of the status of changes to the solicitation appears misplaced. Even assuming a secretary did give Reliable misleading advice, we have consistently held erroneous advice given by an agency cannot estop the government from rejecting a nonresponsive bid. American Note Company, B-212505.2, Oct. 25, 1983, 83-2 C.P.D. ¶ 495; A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 C.P.D. ¶ 194. Moreover, Reliable offers no evidence to show that such advice was deliberately and consciously misleading. Nor do we view DOI's initial rejection of all bids, including Reliable's, as evidencing a deliberate effort by the agency to exclude Reliable in particular from competing for the award because significant changes were made to the solicitation. We find no evidence of

an exclusionary effort by DOI against Reliable, and we note that seven other bidders submitted responsive bids evidencing adequate competition.

We next consider the effect of Reliable's failure to acknowledge amendment No. 7. This Office has traditionally held that a bid which fails to acknowledge an amendment revising the wage rate for a labor category to be employed under the contract must be rejected. Morris Plains Contracting, Inc., B-209352, Oct. 21, 1982, 82-2 CPD ¶ 360. Without acknowledgment of such an amendment, the government legally cannot require the bidder to pay the wages incorporated by the amendment, and the bid therefore is nonresponsive. We have recognized, however, that under some limited circumstances, the failure to acknowledge a wage rate amendment can properly be characterized as a minor informality and can be cured after bid opening, but prior to award. In one such instance, the existence of a collective bargaining agreement assured that the revised wage rates would be adhered to by the contractor, despite its failure to formally acknowledge an amendment to the solicitation to the same effect. Brutoco Engineering & Construction Inc., 62 Comp. Gen. 111 (1983), 83-1 CPD ¶ 9. More recently, we recognized that even absent a collective bargaining agreement, a bidder's failure to acknowledge a wage rate amendment is a minor informality if the effect on bid price is clearly de minimis and the bidder affirmatively evinces its intent to be obligated to pay the revised rates by acknowledging the amendment as soon as possible after bid opening, but before award. United States Department of the Interior--Request for Advance Decision, et al., B-217303, Jan. 11, 1985, 64 Comp. Gen. ____, 85-1 CPD ¶ _____. In that case, we emphasized the fact that any price revision required by a revised wage rate determination would only amount to a 0.013-percent increase in the original bid price.

The present case does not fall within the limited circumstances for waiving minor informalities in wage rate situations. Reliable does not suggest that it is already subject to the revised wage rates under an existing collective bargaining agreement. Moreover, these obligations cannot be said to have had a merely negligible effect on price or contract performance. In this regard, in order to comply with amendment No. 7, Reliable, after bid opening, offered to increase its bid price by over 3 percent and by over 27 percent of the difference between its bid and the next lowest bidder. Furthermore, Reliable's bid contained no prices for the increased work of several line items and

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no price for another line item. These line items changed the amount and the nature of the work to be done. Reliable does not contend that these changes were immaterial. Where changes resulting from the failure to acknowledge an amendment have a material effect on price or contract performance, as do the above-mentioned changes, such failure renders the bid nonresponsive and unacceptable. Marino Construction Company, Inc., supra; Kentucky Building Maintenance, Inc., B-215397, Dec. 19, 1984, 84-2 CPD ¶ 683. Reliable's failure to acknowledge the amendment before bid opening required rejection of the bid.

The protest is denied.

for *Seymour Efron*
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General Counsel